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In the matter of Ang Kui Hua, patient

HIGH COURT (BRUNEI DARUSSALAM) — ORIGINATING SUMMONS NO 31 OF 2010
KIFRAWI CHIEF JUSTICE
26 AUGUST 2010

English Law — Application and modification of English law — Brunei — Appointment of receivers — Whether applicants could rely on UK Lunacy Act 1891, Lunacy Act 1908 and amending Acts and the Management of Patients Estates Rules 1934 — Whether provisions under Brunei Lunacy Act (Cap 48) amount to 'other provision has been or may hereafter be made by a written law in force in Brunei' within s 2 of the Application of Laws Act (Cap 2)

The applicants, the patient's children, applied, inter alia, for a declaration that the patient, Ang Kui Hua, who was now 83, was of unsound mind pursuant to s 116 of the United Kingdom Lunacy Act 1890 and that the patient was going through mental infirmity arising from disease and/or are incapable of managing her affairs. Two doctors from RIPAS Hospital who examined her certified that she was of unsound mind. The applicants also applied to be appointed as receivers of the patient's estate in respect of the management, administration, custody, the regulation, disposition and receipt of the patient's estate pursuant to the Lunacy Act 1908. In making the application, counsel for the applicants invoked provisions under the United Kingdom Lunacy Act 1891, Lunacy Act 1908 and amending Acts, and the Management of Patients' Estates Rules 1934 ('UK Lunacy Acts'). The UK Lunacy Acts in particular the UK Lunacy Act 1890 has detailed provisions. The Brunei Lunacy Act (Cap 48), which came into force on 9 July 1929, has very limited provisions namely, giving power to police to arrest a lunatic who is dangerous or unfit to be at large and to bring him to a magistrate's court. The issue before this court was whether the applicants could rely on the provisions under the UK Lunacy Acts. The court also had to consider whether provisions under the Brunei Lunacy Act (Cap 48) amount to 'other provision has been or may hereafter be made by a written law in force in Brunei' within s 2 of the Application of Law Act (Cap 2).

Held, dismissing the applicants' application:

(1) Unlike the UK Lunacy Act 1891, there is no provision dealing with the management and administration of the property of the lunatic for his benefit and the benefit of his family, and visitation of lunatics. The inference that can be drawn is that the Legislature when enacting the Lunacy Act (Cap 48) did not intend to provide such provisions in Brunei.

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The Legislature must have considered them to be unnecessary in the circumstances at that time in Brunei in 1929. Hence, the UK Lunacy Acts do not apply in Brunei by virtue of s 2 of the Application of Law Act (Cap 2) because the Lunacy Act (Cap 48) amounts to 'other provision' within s 2 of Chapter 2 (see paras 10 & 12).

(2) If there is a serious lacuna in the law involving persons of unsound mind, the solution would be either by amending the Lunacy Act (Chapter 48) or by having a new mental health Act like the United Kingdom's Mental Health Act 1983, Malaysia's Mental Health Act 2001 and Singapore's Mental Disorder and Treatment Act (see para 13).

[Bahasa Malaysia summary

Pemohon-pemohon, anak-anak pesakit, telah memohon, antara lain, untuk satu deklarasi bahawa pesakit, Ang Kui Hua, yang kini 83 tahun, tidak sempurna akal menurut s 16 *United Kingdom Lunacy Act 1890* dan bahawa pesakit sedang melalui kelemahan mental akibat penyakit dan/atau usia lanjut tidak berupaya mengurus jadual hariannya. Dua doktor daripada RIPAS Hospital yang memeriksanya telah mengesahkan bahawa dia tidak sempurna akal. Pemohon-pemohon juga telah memohon agar dilantik menjadi penerima-penerima harta pusaka pesakit berkaitan pengurusan, pentadbiran, jagaan, peraturan, jualan dan penerimaan harta pusaka pesakit menurut *Lunacy Act 1908*. Dalam membuat permohonan, peguam pemohon-pemohon telah menggunakan peruntukan di bawah *Lunacy Act 1891*, *Lunacy Act 1908* dan Akta Pindaan, dan *Management of Patients' Estates Rules 1934* ('*UK Lunacy Acts*'). *UK Lunacy Acts* terutamanya *UK Lunacy Act 1890* mempunyai peruntukan terperinci. *Brunei Lunacy Act (Cap 48)*, yang mula berkuatkuasa pada 9 Julai 1992, mempunyai peruntukan terhad iaitu, untuk memberikan kuasa kepada polis untuk menangkap pesakit gila yang berbahaya atau tidak sihat kepada orang awam dan untuk membawanya ke mahkamah majistret. Isu di hadapan mahkamah ini adalah sama ada pemohon-pemohon boleh bergantung kepada peruntukan di bawah *UK Lunacy Acts*. Mahkamah juga perlu mempertimbangkan sama ada peruntukan di bawah *Brunei Lunacy Act (Cap 48)* membentuk 'other provision has been or may hereafter be made by a written law in force in Brunei' dalam skop s 2 *Application of Law Act (Cap 2)*.

Diputuskan, menolak permohonan pemohon-pemohon:

(1) Tidak seperti *UK Lunacy Act 1891*, tiada peruntukan tentang pengurusan dan pentadbiran hartanah seorang yang tidak waras demi aedahnya dan faedah keluarganya, dan lawatannya. Inferens yang boleh dibuat adalah bahawa badan perundangan semasa menggubal *Brunei Lunacy Act (Cap 48)* tidak berniat untuk menggubal peruntukan sedemikian di Brunei. Badan perundangan sewajarnya telah mempertimbangkan ia tidak perlu dalam keadaan pada masa tersebut di Brunei pada tahun 1929. Justeru itu, *UK Lunacy Acts* tidak terpakai di

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Brunei menurut s 2 *Application of Law Act (Cap 2)* kerana *Brunei Lunacy Act (Cap 48)* termasuklah 'other provision' dalam skop s 2 *Cap 2* (lihat perenggan 10 & 12).

(2) Jika terdapat lakuna dalam undang-undang melibatkan seseorang yang tidak waras, penyelesaiannya adalah dengan meminda *Brunei Lunacy Act (Cap 48)* atau dengan mengubal Akta Kesihatan Mental seperti *United Kingdom Mental Health Act 1983*, Akta Kesihatan Mental 2001 Malaysia dan Akta Penyakit dan *Singapore's Mental Disorder and Treatment Act* (lihat perenggan 13).]

Notes

For a case on application and modification of English law in Brunei, see 6 *Mallal's Digest* (4th Ed, 2010 Reissue) para 2368.

Cases referred to

1. Lee Fatt Khong, 2. Lee Fatt Shoon and Baiduri Bank Berhad (Civil Appeal No 28 of 2008), CA (refd)

Blackburn, Jack and others and Boon Engineering & Construction Sdn Bhd and Ove Arup dan Rakan2 [1965–86] 2 BLR 443, HC (refd)

Bong Sau Fei v Chong Chu Lien and Peng Jung Yant, James [1965–86] 2 BLR 124, HC (refd)

Legislation referred to

Application of Law Act [BR] s 2
Debtor Act (Cap 195) [BR]
Intervention Act (Cap 72) [BR]
Lunacy Act (Cap 48) [BR]
Lunacy Act 1890 [UK] ss 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 134, 135, 136, 137, 138, 139, Parts 1, 2, 3, 4, 5, 6, 7, 8, 11
Lunacy Act 1891 [UK]
Lunacy Act 1908 [UK]
Management of Patients' Estates Rules 1934 [UK]
Matrimonial Causes Act 1950 [UK]
Mental Disorder and Treatment Act (Cap 178) [SG]
Mental Health Act 1983 [UK]
Mental Health Act 2001
Patent Act 1949 [UK]

Geetha Menon (Abrahams Davidson & Co) for the applicants.

Kifrawi Chief Justice:

[1] The applicants who are the abovenamed patient's children, by way of originating summons dated 2 June 2010, apply for the following orders:

(a) A declaration that the patient Ang Kui Hua is of unsound mind pursuant

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to s 116 of the Lunacy Act 1890 and that the patient is through mental infirmity arising from disease and/or age incapable of managing her affairs.

(b) That the applicants be appointed as receivers of the patient's estate in respect of the management and administration and the custody and the regulation and disposition and receipt of the patient's estate pursuant to the Lunacy Act 1908, as amended or extended by any subsequent enactment.

(c) Upon appointment as receivers, the receivers be granted such additional powers in respect of the management and administration and the custody and the regulation and disposition and receipt of the patient's estate pursuant to ss 116–139 of the Lunacy Act 1890 and the Lunacy Act 1908 and any amending Acts thereto as follows:

(i) to authorise or direct the receivers to sell and transfer to Lim Guat Wen (Brunei Yellow IC No 00–117594) of No 2, Simpang 50, Kampong Mabohai, Jalan Kebangsaan, BA 1111, Brunei Darussalam the daughter of the patient, the one unit of terraced residential house under EDR BD 45950 Lot No 54031 situated at Kampong Kiulap, Mukim Gadong, Brunei/Muara District (also known as, house No 8, Simpang 163–12, Jalan Kiarong, Brunei Darussalam) ('the property') (as listed in Schedule A annexed hereto) comprised in the patient's estate for the sale price of B$142,000 which is to be paid by way of a bank loan in the sum of B$142,000 from the Hong Kong and Shanghai Banking Corporation Ltd or such other bank or financial institution as Lim Guat Wen may decide ('the bank').

(ii) To fully and effectually fulfil and complete the sale transaction and the security documents, which the bank may from time to time require as security, including but not limited to memorandum of charge, power of attorney, memorandum underhand of deposit of title deeds, deed of assignment of rentals and sale proceeds and to carry into effect the aforesaid sale and security documents, the receivers or any one or more of them and subject to UOB Bank's rights (defined below), be authorised and/or directed by the High Court as follows:

(A) to discuss, negotiate, give consent, permission, enter into, sign, seal and deliver all relevant documents, complete, sign and deliver all *borangs*, including but not limited to *Borang A* transfer, *borang menggadai* and other forms, applications, letters and instruments mentioned in items 3(i) and (ii) herein;

(B) from time to agree to and to make such changes thereto and

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to enter fnto supplemental documents or instruments thereto as the receivers may deem necessary;

(C) to prepare or cause to be prepared and to execute, sign seal and deliver sale and purchase agreements, power of attorney, assignments, security documents (as may be required by the bank), memorandum of transfer and generally to do all such acts, deeds, matters and things as may be necessary or incidental to and/or to complete and to give full effect the sale and purchase transactions and/or the security documents and the supplemental documents or instruments thereto;

(D) to authorise or direct the receivers to receive and give good discharge for the sale price of the property on behalf of the patient to be dealt with in such manner as the High Court may deem fit to order.

(iii) To authorise and direct the receivers to sell and/or to let any one or all of the properties of the patient (as set out in Schedules A and B annexed hereto):

(A) Without being limited to the matters in item (c)(i) and (ii) above, to authorise or direct the receivers to sell, assign, transfer, let, lease, accept surrenders of leases and tenancies, create any charge or security in respect of the properties of the patient or any part thereof comprised in the estate of the patient, to repair, maintain, to mortgage, charge any one or more of the properties of the patient comprised in the estate of the patient for any purpose or purposes and on such terms and conditions as the receivers may from time to time deem necessary or fit and for such purpose or purposes to carry out and perform any or all of the matters, acts, deeds and things specified in item (c)(ii)(A), (B), (C) and (D) above. The sale or other disposal of the patient's properties comprised in Schedule A shall be subject to obtaining all necessary prior consents in writing of the United Overseas Bank Ltd pursuant to the United Overseas Ltd's first charge and security ('UOB Bank rights') in and over the patient's properties comprised in Schedule A.

(B) For the purposes stated in sub-para (iii)(A) above, to execute, sign, seal and deliver the documents stated in para (c)(ii)(C) above.

(C) To authorise or direct the receivers to receivers and give good discharge for the sale price, rentals, proceeds of loans and any income or monies ('income') arising from any of the properties of the patient to be dealt with in such manner as

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the High Court may deem fit to order subject ways to UOB Bank rights to such income in respect of the properties in Schedule A.

(D) To authorise or direct the receivers to expend such sum or sums of money as shall be standing in credit in the receiver's bank account for the care and daily needs of the patient and/or for the maintenance and/or repair of the properties of the patient from time to time as the receivers may deem necessary.

(iv) To authorise or direct the receivers to execute in favour of Lim Peng Kok @ Lim Mah Lik, (Brunei Yellow IC No 00–003598) a full and irrevocable power of attorney in respect of all those eight units of terraced residential houses, which were gifted by the Patient to Lim Peng Kok @ Lim Mah Lik (Brunei Yellow IC No 00–003598) by a deed of gift dated 17 May 2005 entered into between the patient and Lim Peng Kok @ Lim Mah Lik and identified in Schedule C annexed hereto, subject to such UOB Bank rights as may exist.

(v) To authorise or direct the receivers to deal with and manage the accounts of the patient's estate and bank accounts:

(A) The receivers shall make up annually the accounts of the patient's estate under their regulation and governance and present a copy to the High Court and a copy to be given to each of the patient's children.

(B) Until otherwise ordered by the High Court, the receivers shall credit or cause to be credited all monies received by the receivers, subject to UOB Bank rights, into a bank account ('receivers' bank account') opened and maintained by the receivers for that purpose and other than for defraying expenses for maintenance and repairs from time to time not exceeding the sum of B$5,000 per month and payment of municipal rates against an invoice issued by the municipal board, no other sums shall be withdrawn from the receivers' bank account without an order of the High Court.

(vi) The receivers shall at all times shall act in accordance with and abide by such orders or requirements imposed by the High Court from time to time;

(vii) In carrying into effect their duties as receivers, the receivers shall do all things, acts, matters and deeds necessary or required to discharge their duties from time to time without further reference to any of the patient's children provided that where each of such

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things, acts, matters and deeds is not already authorised by an order of the High Court, the Order of the High Court shall be first obtained.

(viii) The costs of this application shall be paid by Lim Peng Kok @ Lim Mah Lik.

[2] The application is supported by an affidavit dated 2 June 2010, affirmed by all the applicants. They confirmed that their mother, the patient, Ang Kui Hua, who is now 83 years of age and has been a widow since 1987. Her late husband, Lim Kian Chuan was a businessman. She is also and for the last three years has been of unsound mind arising from disease or age and is incapable of managing herself and her affairs. Two doctors from RIPAS Hospital who examined her certified that she is of unsound mind.

[3] In making the application, counsel for the applicants invoke provisions under the United Kingdom Lunacy Act 1891, Lunacy Act 1908 and amending Acts, and the Management of Patients' Estates Rules 1934 ('UK Lunacy Acts'). Our Brunei Lunacy Act (Cap 48) which came into force on 9 July 1929 has very limited provisions. The Lunacy Act (Cap 48) has provisions giving power to police to arrest a lunatic who is dangerous or unfit to be at large and to bring him to a magistrate's court. The magistrate's court can make inquiries and make orders for the lunatic to be admitted into a mental hospital, licensed mental hospital or to be taken care by any friend or relative of the lunatic. The magistrate's court is also given power to deal with any relative or other person who is legally bound to maintain the alleged lunatic for treating him cruelly or neglecting him. The magistrate can make order to detain a lunatic pending a medical report.

[4] Whereas the UK Lunacy Acts in particular the UK Lunacy Act 1890 has detailed provisions as follows:

(a) Part 1 (ss 4–38) prescribed procedure for the reception and detention of persons of unsound mind in public mental hospitals, registered hospitals, licensed houses or in the care of private individuals.

(b) Part 2 (ss 39–89) dealt with the care and treatment and the discharge of patients of unsound mind.

(c) Part 3 (ss 90–108) dealt with the procedure for judicial inquisition as to unsoundness of mind.

(d) Part 4 provided for the management and administration of the property of persons incapable of managing their affairs owing to unsoundness of mind or mental infirmity arising from disease or age and defines the jurisdiction of the judge in lunacy.

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(e) Part 5 (s 162), Part 6 (ss 163–182) and Part 7 (ss 183–206) were concerned with the visitation of patients, the establishments in which they are being treated and the appointments and duties of the chancery visitors and the visitors of licensed houses.

(f) Part 8 (ss 207–237) provided for the licensing of these houses.

(g) Part 11 (ss 315–332) provided the important prohibition against detention of persons of unsound mind otherwise than in accordance with the Act, ill treatment of persons of unsound mind, abused of female person of unsound mind etc.

[5] I also note that the UK Lunacy Act 1890 was amended by the UK Lunacy Act 1908 giving powers to receivers any powers which could be exercised by a committee of the estate of a person of unsound mind.

CAN THE APPLICANTS RELY ON THE PROVISIONS UNDER THE UK LUNACY ACT 1891, LUNACY ACT 1908 AND AMENDING ACTS AND THE MANAGEMENT OF PATIENTS' ESTATES RULES 1934? (UK LUNACY ACTS)

[6] Section 2 of the Application of Laws Act (Cap 2) provides that:

> Subject to the provisions of this Act and save in so far as other provision has been Or may hereafter be made by any written law in force in Brunei Darussalam, the Common Law of England and the doctrines of equity, together with statutes of general application, as administered or in force in England at the commencement of this Act, shall be in force in Brunei Darussalam:
>
> Provided that the said Common Law, doctrines of equity and statutes of general application shall be in force in Brunei Darussalam so far only as the circumstances of Brunei Darussalam and of its inhabitants permit and subject to such qualifications as local circumstances and customs render necessary.

[7] I also note that Cap 2 came into force on 25 April 1951.

[8] We have the benefit of previous decisions by this court in *Bong Sau Fei v Chong Chu Lien and Peng Jung Yant, James* [1965–86] 2 BLR 124 (*Bong Sau Fei*'s case) and *Blackburn, Jack and others and Boon Engineering & Construction Sdn Bhd and Ove Arup dan Rakan2* [1965–86] 2 BLR 443 (*Blackburn*'s case) as regards the meaning of 'Statutes of General Application' in s 2 of the Application of Laws Act (Cap 2) mentioned above. In the *Bong Sau Fei*'s case, the court decided that the UK Matrimonial Causes Act 1950 was a statute of general application in force in Brunei. However, in the *Blackburn*'s case, the court ruled that the UK Pateent Act 1949 was not a statute of general

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application because the Brunei Invention Act (Cap 72) amounts to 'other provision, made by written law in force in Brunei' within s 2 of the Application of Laws Act (Cap 2). Roberts CJ commented at p 132 in *Bong Sau Fei*'s case:

> I suggest that among the reasons for deciding that a statute is not of general application are that it is of a local, personal or temporary nature, or that it is limited in scope (eg a fiscal or revenue measure) or that it deals with specific institution (eg electricity board or an art gallery) or that it is concerned with a limited class of persons (like the Ecclesiastical Commissioners, or those who work in the coal mining industry). The 1950 Act applied generally throughout England and does not fail for any of the reason suggested above.

[9] Roberts CJ in the *Bong Sau Fei*'s case also posed the following questions to be resolved:

(a) Is the Act a 'statute of general application'?

(b) Do the 'circumstances of the statute and of its inhabitants permit' it to be in force?

(c) Do local circumstances and native customs require any 'qualification' of it?

[10] Like what Roberts CJ did in the *Blackburn*'s case, in this instant case, I have to decide not only the UK Lunacy Acts are 'statutes of general application' but also decide whether provisions under our Lunacy Act (Cap 48) amount to '*other provision* has been or may hereafter be made by a written law in force in Brunei' within s 2 of the Application of Law Act (Cap 2). I have briefly outlined the provisions of our law under the Lunacy Act (Cap 48) and the UK Lunacy Acts. Unlike the UK Lunacy Act 1891, there is no provision dealing with the management and administration of the property of the lunatic for his benefit and the benefit of his family, and visitation of lunatics. The inference that can be drawn is that the Legislature when enacting the Lunacy Act (Cap 48) did not intend to provide such provisions in Brunei. The Legislature must have considered them to be unnecessary in the circumstances at that time in Brunei in 1929.

[11] In a recent case, *1. Lee Fat Khong 2. Lee Fatt Shoon and Baiduri Bank Bhd* (Civil Appeal No 28 of 2008), the Court of Appeal decided that the Debtors Act is 'a provision which has been made in a written law in force in Brunei Darussalam' within s 2 of the Application of Law Act (Cap 2). The Brunei Court could not, therefore, import the English law which gives power to the court to order seizure of land in the execution of a judgment. The Debtors Act only confers power to the court to order seizure of property of the defendant, including land, in certain circumstances.

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[12] I am therefore of the opinion that the UK Lunacy Acts do not apply in Brunei by virtue of s 2 of the Application of Law Act (Cap 2) because our Lunacy Act (Cap 48) amounts to 'other provision' within s 2 of Cap 2.

[13] If there is a serious lacuna in the law involving persons of unsound mind the solution would be either by amending our Lunacy Act (Cap 48) or by having a new mental health Act like the United Kingdom's Mental Health Act 1983, Malaysia's Mental Health Act 2001 and Singapore's Mental Disorder and Treatment Act.

[14] The applicants cannot rely on the UK Lunacy Acts. I therefore dismiss the application.

Applicant's application dismissed.

Reported by Ashgar Ali Ali Mohamed